

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STEVEN FORSHEY

Plaintiff,

-against-

9:17-CV-0575 (LEK/ATB)

CHRISTOPHER MILLER, *et al.*,

Defendants.

ORDER

I. INTRODUCTION

This matter comes before the Court following a Report-Recommendation filed on November 7, 2018, by the Honorable Andrew T. Baxter, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 94 (“Report-Recommendation”).

II. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); L.R. 72.1(c). If objections are timely filed, a court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” § 636(b).

However, if no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. *Barnes v. Prack*, No. 11-CV-857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); *Farid v. Bouey*, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008), abrogated on other grounds by *Widomski v. State Univ. of*

N.Y. at Orange, 748 F.3d 471 (2d Cir. 2014); see also *Machicote v. Ercole*, No. 06-CV-13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” § 636(b).

III. DISCUSSION

No objections were filed in the allotted time period, even after the Court extended the deadline at Plaintiff’s request. Docket, Dkt. No. 97. Plaintiff did file an objection outside the allotted time period, however. Dkt. No. 98 (“Objection”). The Objection simply reiterates arguments made to the Magistrate Judge or else makes conclusory statements about the Magistrate Judge’s bias against Plaintiff. *Id.* Accordingly, even if the Objection had been filed within the allotted time period, the Court would still review the Report-Recommendation only for clear error. *Barnes*, 2013 WL 1121353, at *1. The Court has reviewed the Report-Recommendation for clear error and has found none. The Court therefore adopts the Report-Recommendation in its entirety.

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 94) is **APPROVED and ADOPTED in its entirety**; and it is further

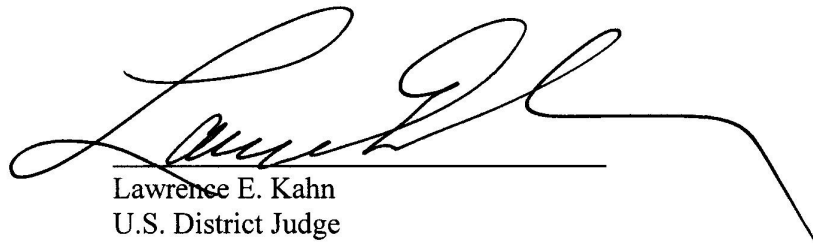
ORDERED, that Defendants’ Partial Motion to Dismiss (Dkt. No. 76) is **GRANTED**, and the following claims are **DISMISSED without prejudice**: (1) all claims against defendants

Krandy, Koenigsmann, Miller, Bellamy, Kuinlan, Beebe, and Green; and (2) the deliberate indifference claims against all defendants arising from Plaintiff's foot injury and underweight status; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: February 20, 2019
Albany, New York



Lawrence E. Kahn
U.S. District Judge